

Message Text

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ACTION L-03

INFO OCT-01 EA-11 ADP-00 CIAE-00 COME-00 EB-11 INR-10

LAB-06 NSAE-00 RSC-01 SIL-01 TRSE-00 VO-03 SCA-01

PPT-02 H-02 RSR-01 /053 W
----- 037824

R 111030 Z APR 73

FM AMEMBASSY BANGKOK

TO SECSTATE WASHDC 2268

LIMITED OFFICIAL USE BANGKOK 5712

EO 11652: N/ A

TAGS: ELAB

SUBJECT: ALIEN OCCUPATION DECREE AND ALIEN BUSINESS DECREE

REF: STATE 065255

1. SUMMARY. EMBOFFS CONSULTED AGAIN WITH MFA OFFICIALS ON RELATIONSHIP BETWEEN AER TREATY AND ABD/ AOD. OFFICIALS GAVE MFA POSITION ON DEFINITION OF US FIRMS AND INTERPRETATION OF ARTICLES I: I, IV:3 AND 4. DIFFERENCES OF INTERPRETATION MAY EXIST ON FIRST ISSUE AND WITH REFERENCE TO ARTICLE IV:3 ON DEFINITION OF WORD " CALLINGS". POLICY ISSUES REMAINING TO BE RESOLVED WITHIN RTG ARE PROVISIONS FOR EFFECTIVE CONTINUOUS RESIDENCES IN THAILAND FOR US BUSINESSMEN AND FATE OF UNREGISTERED US FIRMS AT TERMINATION OF TREATY. END SUMMARY.

2. EMBOFFS CONTINUED DIALOGUE WITH LEGAL AND TREATY DEPARTMENT OFFICIALS ON ABD AND AOD USING REFTEL.

3. MFA HAS CONSIDERED ISSUE OF DEFINITION US FIRMS, BASING THEIR POSITION ON LANGUAGE IN ARTICLE II:1. THEIR CONCLUSIONS ARE A) US COMPANIES INCORPORATED IN US WITH BRANCHES IN THAILAND ARE ENTITLED TO TREATY PROTECTION; B) COMPANIES INCORPORATED IN THAILAND WHILE NOT FALLING WITHIN LANGUAGE OF ARTICLE II:2 ARE PROTECTED BY ARTICLE
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IV:4 C) US OWNED COMPANIES INCORPORATED IN THIRD COUNTRIES ARE NOT ENTITLED TO PROTECTION (EMBOFFS DEMURRED, CITING US VIEW THAT OWNERSHIP SHOULD BE CONTROLLING, NOT PLACE OF INCORPORATION); 4) COMPANIES OWNED 50-50 US AND THAI OR US AND THIRD COUNTRY NATIONALS FALL IN HAZY AREA. DEPENDS ON WHERE REAL CONTROL LIES, SO WOULD HAVE TO LOOK INTO ARTICLES OF INCORPORATION AND OTHER AGREEMENTS. SUCH FIRMS MIGHT BE PROTECTED UNDER ARTICLE IV:4 IF THEY ARE "CONTROLLED" BY US INTERESTS. MFA OFFICIALS REQUESTED US DEFINITION OF TERMS "OWNED" AND "CONTROLLED" UNDER ARTICLE IV:4. DOES "OWNED" MEAN 100 PERCENT OWNERSHIP WHILE "CONTROLLED" MEANS ANYTHING BETWEEN 51 AND 99 PERCENT? THEY ALSO REFERRED TO ARTICLE XII:1 (F) AS EXCLUDING THIRD COUNTRY FIRMS INCORPORATED IN US FROM TREATY PROTECTION.

4. MFA HAD CONSULTED WITH SPECIAL COMMITTEE ON TREATIES ESTABLISHED SOME YEARS AGO ON QUESTIONS RAISED BY EMBASSY. ON INTERPRETATION OF ARTICLE I:1 VIEW IS THAT LANGUAGE DOES NOT ENTITLE ALIEN TO ENTER AS A MATTER OF RIGHT. THEY HAD CHECKED RECORDS ON NEGOTIATIONS OF THIS ARTICLE AND THAI SIDE HAD MADE CLEAR THAI LAW WOULD TAKE PRECEDENCE OVER TREATY. THEY SEEMED ACCEPT ARGUMENT THAT REQUIREMENT TO ENTER COUNTRY EVERY 30 OR 60 DAYS TOGETHER WITH REQUIREMENT OBTAIN WORK PERMIT IS IN CONFLICT WITH TREATY PROTECTION. THEY WILL STUDY THIS PROBLEM FURTHER AND CONSULT WITH OFFICIALS OF IMMIGRATION DEPARTMENT CONCERNING CONTINUANCE OF MFA PROGRAM OF ASSISTANCE TO US BUSINESSMEN. EMBOFFS MADE POINT STRONGLY THAT PRESENT PROGRAM APPARENTLY IN STATE OF SUSPENSION AND THAT SOME ARRANGEMENT MUST BE MADE IF TREATY IS TO BE EFFECTIVE..

5. ON ARTICLE IV:3 SPECIAL COMMITTEE FOCUSED ON THE WORD "CALLINGS" AND WAS OF THE OPINION THAT SINCE THERE WAS A COMMA IN THE SENTENCE JUST PRIOR TO THIS WORD IT DESIGNATED SOMETHING SEPARATE AND DIFFERENT FROM "PROFESSIONS". WHEN THEY CONSULTED AMERICAN DICTIONARY THEY FOUND THE WORD "CALLINGS" COVERED BUSINESS AND TRADE. AS A RESULT COMMITTEE OF OPINION THIS LANGUAGE PERMITTED AN EXCEPTION TO ARTICLE IV:1 SO THAT EACH PARTY COULD RESERVE BUSINESSES AND ENTERPRISES AS WELL AS PROFESSIONS. EMBOFFS TOOK STRONG EXCEPTION TO THIS INTERPRETATION. LIMITED OFFICIAL USE

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ALSO DISCOVERED THAT THAI WORD USED APPARENTLY MEANS

" OCCUPATION", NOT ENTERPRISE OR BUSINESS. HOWEVER, AGREED
CONSULT WASHINGTON.

6. EMBOFFS AGAIN STRESSED IMPORTANCE DEALING WITH UN-
RESOLVED QUESTION OF WHAT HAPPENS TO UNREGISTERED US FIRMS
WHEN TREATY IS TERMINATED. THEY REPORTED OFFICIALS OF
COMMERCIAL REGISTRATION DEPARTMENT HAD SAID NOTHIG COULD
BE DONE AT THIS TIME SINCE MATTER DEPENDED UPON RTG POLICY
AT TIME OF TREATY TERMINATION. EMBOFFS STRESSED SOME
RTG POLICY WAS ESSENTIAL NOW AS OTHERWISE US FIRMS TAKING
ADVANTAGE OF TREATY PROTECTION COULD IN EFFECT BE PENALIZED
AND ESULT WOULD BE CONTRADICTORY TO SPIRIT AND INTENT
OF TREATY. MFA OFFICIALS AGREED THIS WAS AN EXTREMELY
SERIOUS QUESTION AND SAID THEY WOULD PURSUE THE MATTER.

7. EMBASSY REQUESTS WASHINGTON VIEWS ON ISSUES RAISED
IN PARAS. 3, 4 AND 5.
UNGER

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*** Current Handling Restrictions *** n/a

*** Current Classification *** LIMITED OFFICIAL USE

Message Attributes

Automatic Decaptioning: X
Capture Date: 01 JAN 1994
Channel Indicators: n/a
Current Classification: UNCLASSIFIED
Concepts: n/a
Control Number: n/a
Copy: SINGLE
Draft Date: 11 APR 1973
Decaption Date: 01 JAN 1960
Decaption Note:
Disposition Action: RELEASED
Disposition Approved on Date:
Disposition Authority: garlanwa
Disposition Case Number: n/a
Disposition Comment: 25 YEAR REVIEW
Disposition Date: 28 MAY 2004
Disposition Event:
Disposition History: n/a
Disposition Reason:
Disposition Remarks:
Document Number: 1973BANGKO05712
Document Source: CORE
Document Unique ID: 00
Drafter: n/a
Enclosure: n/a
Executive Order: n/a
Errors: n/a
Film Number: n/a
From: BANGKOK
Handling Restrictions: n/a
Image Path:
ISecure: 1
Legacy Key: link1973/newtext/t19730439/aaaaicty.tel
Line Count: 137
Locator: TEXT ON-LINE
Office: ACTION L
Original Classification: LIMITED OFFICIAL USE
Original Handling Restrictions: n/a
Original Previous Classification: n/a
Original Previous Handling Restrictions: n/a
Page Count: 3
Previous Channel Indicators:
Previous Classification: LIMITED OFFICIAL USE
Previous Handling Restrictions: n/a
Reference: 73 STATE 065255
Review Action: RELEASED, APPROVED
Review Authority: garlanwa
Review Comment: n/a
Review Content Flags:
Review Date: 30 JAN 2002
Review Event:
Review Exemptions: n/a
Review History: RELEASED <30-Jan-2002 by collinp0>; APPROVED <14 FEB 2002 by garlanwa>
Review Markings:

Declassified/Released
US Department of State
EO Systematic Review
30 JUN 2005

Review Media Identifier:
Review Referrals: n/a
Review Release Date: n/a
Review Release Event: n/a
Review Transfer Date:
Review Withdrawn Fields: n/a
Secure: OPEN
Status: <DBA CORRECTED> gwr 971218
Subject: ALIEN OCCUPATION DECREE AND ALIEN BUSINESS DECREE
TAGS: ELAB, TH
To: L
SECSTATE WASHDC
Type: TE
Markings: Declassified/Released US Department of State EO Systematic Review 30 JUN 2005